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State v. Adams Respondent's Brief Dckt. 38910

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 38910
)	
vs.)	
)	
IRWIN RYAN RAY ADAMS,)	
)	
Defendant-Appellant.)	
_____)	

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF JEROME**

HONORABLE JOHN K. BUTLER
District Judge

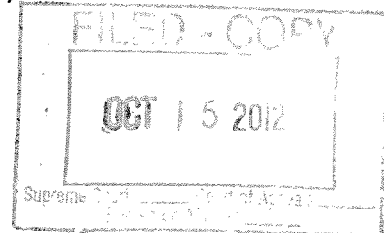
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STATEMENT OF THE CASE

Nature Of The Case

Irwin Ryan Ray Adams appeals from the judgment of conviction entered upon the jury verdict finding him guilty of vehicular manslaughter with gross negligence.

Statement Of Facts And Course Of Proceedings

Adams was charged in a Jerome County District Court Information with vehicular manslaughter with gross negligence "by driving his motor vehicle at a high rate of speed, to wit: 108 miles per hour in a 50 miles per hour zone and/or trying to chase down another vehicle and crashing his motor vehicle which caused the death of Allen Larson." (R., pp.69-70, 203-204, 251-252.) At trial, a jury convicted Adams of vehicular manslaughter with gross negligence (R., pp.341, 385-386), and the district court sentenced him to a unified sentence of ten years with three years fixed (R., pp.400-403, 404-409). Adams filed a motion for a new trial (R., pp.421-422), which was later withdrawn on his own motion (R., pp.463-464). Adams filed a Rule 35 motion for correction or reduction of his sentence (R., pp.467-468), which was denied (R., pp.495-499.) Adams filed a timely notice of appeal. (R., pp.428-431.)

ISSUES

Adams states the issue on appeal as:

Did the district court err in precluding the jurors from re-reviewing the electronic trial exhibits during its deliberations?

(Appellant's Brief, p.10.)

The state rephrases the issue as:

Did the district court's refusal to allow State's Exhibits 131 and 134 to be taken into the jury room during its deliberations constitute prejudicial error?

ARGUMENT

The District Court's Refusal To Allow State's Exhibits 131 And 134 To Be Taken Into The Jury Room During Its Deliberations Did Not Constitute Prejudicial Error

A. Introduction

During trial, the district court admitted State's Exhibits 131 and 134 into evidence and they were played for the jury. (Tr., p.176, L.21 – p.177, L.8; p.186, L.9 – p.188, L.10.) State's Exhibit 131 is an audio recording of an interview of Adams conducted by I.S.P. Sergeant Keith Thompson at Saint Benedict's Hospital in Twin Falls the evening of the accident. (Tr., p.172, Ls.17-23; p.176, Ls.4-13.) State's Exhibit 134 is a video (with audio) of the scene shortly after the accident, which was taken by the data recording system of a vehicle driven by Corporal Kirt Thorpe of the Jerome County Sheriff's Office.¹ (Tr., p.185, Ls.15–25.) In the statements recorded by those two exhibits, as well as statements to two others after the accident, Adams said he was being chased by another car and he was traveling about 75 miles per hour. (Tr., p.159, Ls.13-22; p.167, L.3 – p.168, L.1; p.172, L.17 – p.174, L.14; p.190, Ls.1-4; p.196, Ls.13-16; p.206, Ls.12-13.) However, several witnesses testified that Adams later admitted he was chasing his former girlfriend, Shayna Gonzalez, and was traveling up to 110 miles per hour. (Tr., p.218, Ls.3-20; p.219, Ls.12-19; p.225, L.23 – p.226, L.10; p.234, L.4 - 1p.236, L.8; p.243, Ls.12-14; p.248, L.9 – p.250, L.6.)

¹ The Jerome County Clerk's Office has notified the Court that State's Exhibit 134, a DVD videotape, has been damaged and was, therefore, not sent to the Court as an exhibit on appeal. The state is making attempts to determine whether the district court is able to provide a true and accurate substitute copy of State's Exhibit 134 to the Court.

In closing argument, Adams' attorney told the jury that, when they deliberate, they should replay the two exhibits to help determine whether Adams was in any condition to concoct a story that he was being chased and was only going 75 miles per hour.² (Tr. p.457, L.19 – p.459, L.6.) At the end of closing arguments, the district court stated in the jury's presence:

One thing I do want to clarify is that both counsel have said that you can listen to the audios, that is not the case. The audios are in evidence. You must remember what it was you heard, what you saw. Your deliberations must occur within the jury room and the jury room does not have the capability of playing those things.

(Tr., p.479, Ls.7-13.) After a few unrelated comments by the district court, Adams' counsel informed the court that she had an issue with regard to the video and the audio (Tr., p.480, Ls.19-21), and the following colloquy ensued:

THE COURT: I understand that, but the jurors have to remember what they saw, what they heard.

[DEFENSE COUNSEL]: Well, but so they can't see the video, but they can get the pictures?

THE COURT: Correct. Okay.

[DEFENSE COUNSEL]: Okay. I would just like to place that on the record as an objection to the fact that they can't see that.

(Tr., p.480, L.22 – p.481, L.4.)

² In the state's rebuttal argument, the prosecutor told the jury that, if it did listen to the video, it should consider that Adams first told Detective Thorpe he did not know how fast he was traveling, and when the detective accused him of going extremely fast, Adams said he was only doing 70 -- but subsequently said, without any apparent reflection, that he could not remember his name, date of birth, or passenger's name. (Tr., p.476, L.4 – p.p.477, L.3.)

On appeal, Adams argues that, under I.C. § 19-2203,³ the district court committed error “in imposing a blanket prohibition against the jurors re-reviewing the electronic exhibits and admonishing them they had no choice but to rely on their memories of those exhibits.” (Appellant’s Brief, pp.12-13.) Adams further asserts it cannot be found beyond a reasonable doubt that, even if the jury had been allowed to replay the two recordings during deliberations, it still would have convicted him of vehicular manslaughter with gross negligence.⁴ (Appellant’s Brief, pp.13-15.)

Regardless of the appropriateness of the district court’s discretionary ruling, any error in precluding the jury from replaying the two exhibits in the jury room was harmless beyond a reasonable doubt in light of the fact that the jury watched or listened to the two exhibits during the state’s case-in-chief, the volume of other evidence showing Adams’ distraught, hysterical, and confused demeanor when he made his initial statements, and the overwhelming evidence establishing that he drove with gross negligence by

³ I.C. § 19-2203 reads:

Papers which may be taken by jury. -- Upon retiring for deliberation, the jury may take with them all exhibits and all papers (except depositions) which have been received in evidence in the cause, or copies of such public records or private documents given in evidence as ought not, in the opinion of the court, to be taken from the person having them in possession. They may also take with them the written instructions given and notes of the testimony or other proceedings on the trial, taken by themselves or any of them, but none taken by any other person.

⁴ Vehicular Manslaughter with gross negligence (I.C. § 18-4006(3)(a)) is punishable as a felony by a fine up to \$10,000 and/or imprisonment up to ten years (I.C. § 18-4007(3)(a)). Vehicular Manslaughter without gross negligence, and not done by an unlawful act amounting to a felony (I.C. § 18-4006(c)), is a misdemeanor punishable by a fine up to \$2,000 and/or a jail sentence not exceeding one year (I.C. § 18-4007(3)(c)).

travelling well over 100 miles per hour as he was chasing another car when the accident occurred.

B. Standard Of Review

Whether to permit exhibits admitted at trial to be taken into the jury room for consideration by the jury during deliberations is a decision that rests within the discretion of the trial court. Van Winkle v. Owens-Corning, 683 N.E.2d 985, 993 (Ill. App. 1997); State v. Kirksey, 725 S.W.2d 611, 616 (Mo. App. 1987); Radloff v. Jans, 428 N.W.2d 112, 116 (Minn. App. 1988); see State v. Fairchild, 121 Idaho 960, 969, 829 P.2d 550, 559 (Ct. App. 1992) (applying discretionary standard to granted jury request to more thoroughly examine exhibits already allowed in jury room).

“A defendant appealing from an objected-to, non-constitutionally-based error shall have the duty to establish that such an error occurred, at which point the State shall have the burden of demonstrating that the error is harmless beyond a reasonable doubt.” State v. Perry, 150 Idaho 209, 222, 245 P.3d 961, 974 (2010).

C. The District Court's Refusal To Allow The Two Exhibits To Be Replayed In The Jury Room During Deliberations Was Not Prejudicial Error

Assuming, *arguendo*, that the district court's comments constituted a blanket ruling that State's Exhibits 131 and 134 would not be replayed during jury deliberations under any circumstance, and that such a ruling was error, such error is harmless beyond a reasonable doubt. Perry, 150 Idaho at 222, 245 P.3d at 974. There is nothing in the record to suggest that allowing the jury to play those exhibits a second time during its deliberations would have made a difference in the outcome of the trial.

The jury listened to State's Exhibit 131 and viewed (and listened to) State's Exhibit 134 during the state's case in chief. (Tr., p.176, L.21 – p.177, L.8; p.186, L.9 – p.188, L.10.) Having done so, the jurors were able to rely on their own memories of Adams' statements and demeanor, as shown by those two recordings, during its deliberations. The jurors were also entitled to take notes of what they heard and saw when the two exhibits were played, and to review their notes during deliberations. (3/9/11 Tr., p.165, Ls.19-23; p.166, L.23 – p.167, L.3.) It must be assumed that the jurors gave the evidence presented in State's Exhibits 131 and 134 their proper weight, as it is the jury's province to determine the credibility of witnesses and the weight to be given to the evidence. State v. Thomas, 133 Idaho 172, 174, 983 P.2d 245, 247 (Ct. App. 1999). Further, the jury's consideration of State's Exhibits 131 and 134 was on par with its consideration of any other live trial testimony, for which the jury had to rely upon its own memory and notes during deliberations. Any difference between having reviewed the two exhibits only in the courtroom and being permitted to re-review them during jury deliberations is negligible.

Although the jury did not have the opportunity to replay the two exhibits during its deliberations to consider whether Adams' demeanor disproved the prosecutor's suggestion that his statements about being chased and driving 75 miles per hour were contrived, in addition to having heard or watched the two exhibits in the courtroom, there was ample testimony showing Adams' emotional and mental condition when he

made those statements.⁵ I.S.P. Corporal Walker testified that, while still at the accident scene, Adams was visibly upset, possibly crying, his voice was elevated, he spoke loudly and quickly, and he was demonstrative in his hand motions. (Tr., p.158, L.25 – p.159, L.5; p.165, L.23 – p.166, L.6.) Corporal Walker also noted that Adams said he did not know the name of his passenger. (Tr., p.159, Ls.18-22; p.166, Ls.16-18.) Jerome County Deputy Sheriff Lawrence Green explained that Adams started crying hysterically and squeezed his head with his hands when the deputy re-questioned him about being the driver upon hearing Adams repeatedly say in a phone call he was driving after Adams had previously told the deputy he could not remember if he was the driver. (Tr., p.196, L.20 – p.198, L.21; p.200, Ls.13-20.) Kathie Allison, the first person to stop at the accident scene, described Adams' as hysterical, crying, excited, upset, and very distraught. (Tr., p.204, Ls.19-21; p.206, Ls.4-24; p.211, L.21 – p.212, L.6.) Ms. Allison also testified that Adam said he could not recall his own name, his passenger's name, or his father's name. (Tr., p.212, Ls.17-20.) The above-described testimony, coupled with the jury's courtroom review of State's Exhibits 131 and 134, presented a clear and undisputed picture of Adams as distraught, upset, and so confused he did not even know his own name. The playing of the two exhibits a second time during jury deliberations – as opposed to playing them once during the state's

⁵ Adams' argument is based on the conjecture that the jury would have been able to discern from his excited and distraught condition that he would have been less able to fabricate a story about being chased and going 75 miles per hour. There is nothing to suggest that the inverse might not be just as probable – that Adams' condition may have made it more likely he would make up a false story to avoid blame for his immediate conduct.

case-in-chief -- would not have added to the jury's understanding of Adams' condition when he made his initial statements.

Moreover, the evidence of Adams' guilt was overwhelming, and a replaying of the two exhibits during jury deliberations would not have had any impact on the most damaging evidence presented at trial – namely, the speed of Adams' car and his contradictory statements. The speed limit on the road where the accident occurred is 50 miles per hour. (Tr., p.306, Ls.2-3.) Although Adams argued at trial that he was being closely followed by another vehicle and was going 75 miles per hour, the scientific/technical evidence clearly showed he was travelling 108 miles per hour when the accident occurred. I.S.P. Master Corporal Denise Gibbs, an accident reconstruction expert, testified that, based upon measurements taken from the accident scene with Corporal Walker, the minimum speed of Adams' car at the "point of takeoff was 108.02 miles per hour," and it was airborne for 80.33 feet. (Tr., p.34, Ls.15-18; p.58, Ls.11-14; p.128, L.20 – p.131, L.23; p.135, L.4 – p.140, L.3.) Bobbie Ambrose was at her parent's home when she happened to look out the picture window to see Adams' car "in the air" in a nosedive position, then saw it come down and hit on the front of the hood and "ended up flipping over into a field." (Tr., p.13, L.2 – p.16, L.12.) Even though Adams testified that he was going 75 miles per hour at the time of the accident (Tr., p.305, L.16 – p.306, L.1; p.314, Ls.20-22; p.317, Ls.21-23), no scientific or technical evidence was presented at trial to refute the expert testimony of Master Corporal Gibbs that Adams'

car was traveling at least 108 miles per hour when it crested the hill and became airborne.⁶

The evidence showing Adams was traveling 108 miles per hour is, by itself, indisputable proof he was driving with gross negligence by driving “carelessly or heedlessly, or without due caution and circumspection and at a speed or in a manner as to endanger or be likely to endanger any person or property.” (Tr., p.424, L.12 – p.425, L.5.) Nothing gleaned about Adams’ condition or demeanor from replaying State’s Exhibits 131 and 134 during jury deliberations would have cast any doubt on the scientific/technical evidence showing Adams was traveling over 108 miles per hour at the time of the accident.

Moreover, replaying the two exhibits during jury deliberations would not have clarified the numerous inconsistent statements Adams made following the accident, described as follows:

While still at the accident scene, Adams was heard telling contradictory versions of the accident by Deputy Green: Adams first told the deputy he could not remember if he was the driver (Tr., p.196, Ls.20-23), but when immediately afterwards talking on the phone to (apparently) his father, the deputy overheard Adams say at least three times “that he was driving and that he was doing about 80” (Tr., p.196, L.20 – p.198, L.21; p.200, Ls.143-20). When Deputy Green confronted Adams with his contradictory statements, he “became even more frantic,” started crying hysterically, and “put his

⁶ Master Corporal Gibbs testified that her reconstruction report (St. Ex. 124) was “reviewed by three other reconstructionists, signed off by our lead reconstruction, and then submitted as a final copy of a report so that four other people have looked at what I have done to make sure that it’s correct.” (Tr., p.139, Ls.1-7.)

hands on top of his head squeezing his head and just sat down.”⁷ (Tr., 198, L.7 – p.199, L.3.)

Adams continued to tell inconsistent stories about the accident. According to Stephanie Nevarez, Allen Larson's sister, she had never met Adams until after the accident, and during a conversation at the Boise hospital, Adams first told her he had been chased and was traveling 65 or 70 miles per hour; however, when she pressed him for the truth, he admitted he was “probably going around a hundred.” (Tr., p.218, L.3 – p.219, L.19.) Marissa Dempsey, a high school acquaintance of Adams, went to the Twin Falls hospital after the accident, and Adams initially told her in the presence of his sister that he had been chased by his former girlfriend (Shayna) and her father in a big truck, but after Adams' sister walked away he told Marissa “he didn't realize how fast that he was going until he looked down and saw that he was going 110.” (Tr., p.247, L.5 – p.249, L.6.) Ms. Dempsey also testified that during the same hospital visit, Adams said he was chasing Shayna because she broke up with him and he wanted to talk to her. (Tr., p.249, L.9 – p.250, L.6.)

Adams told several other people that he was traveling over 100 miles per hour while chasing Shayna. Joshua Kimbrough, a friend of both Adams and Allen Larson, testified that when he spoke to Adams at the (Twin Falls) hospital after the accident, Adams said he had been going 110 miles per hour and he was chasing Shayna. (Tr., p.224, L.5 – p.225, L.18.) Joshua also visited Adams at the Boise hospital where Allen Larson had been transported, and Adams again said he had been chasing Shayna and

⁷ Adams' contention that, given his condition right after the accident, he could not have concocted a false story about the accident is dismantled by Deputy Green's testimony.

going 110, adding that “he should have listened to Allen a couple miles back when – because he was saying – Allen was saying he wanted to get out.” (Tr., p.225, L.23 – p.226, L.10.) Brandy Kimbrough and her husband Larry testified that Adams made a variety of statements to them admitting he had been traveling 110 miles per hour chasing Shayna because she had broken up with him. (Tr., p.234, L.4 – p.236, L.8; p.241, L.16 – p.243, L.14.)

The inconsistencies between Adams’ trial testimony and his statements to the five witnesses described above, in which he admitted traveling over 100 miles per hour while chasing Shayna, would not have been clarified or explained by his demeanor or condition as shown by a replaying of the two exhibits by the jury during its deliberations.

Nor would a replay of State’s Exhibits 131 and 134 by the jury have had any impact on the testimony of Brian Constable and Teresa Stone-Broncheau about how Adams chased Brian’s car and followed closely as Brian drove with Shayna, Shayna’s baby son, and Teresa (Shayna’s mother) in the car. (Tr., p.83, Ls.8-18; p.84, L.15 – p.86, L.4; p.101, L.11 - p.104, L.4; p.112, Ls.9-13.) Teresa testified in detail about what transpired while the car she rode in was being chased by Adams:

- A. He got – He came up to the rear of our car and he was right – I mean very very close to the rear of our car. I asked my daughter if she thought he was going to try a pit maneuver.

. . . .

I told Mr. Constable, I said, “Brian, whatever you do take care of – I mean take care of my daughter and my grandson.”

He didn’t know Ryan. He had no idea – He had no idea anything [sic] about Ryan. He was just simply doing a favor for me by

picking up my daughter and my grandson. And he was, like, "Well, what do you mean?"

I was, like, "He's obviously pretty mad so just take precautions. Take care of my daughter and my grandson."

I looked back and Ryan was right there. And as I'm looking back out through the windshield, he went to pass us, got up beside us and him and his passenger both, him and Allen both, looked in our car and then they continued on, and they actually got in front of us.

And I told Brian, I says, "Be careful. I have a feeling he's going to hit his brakes."

Brian backed off a little bit. And we were approaching 200 East Road at that point. Ryan had just got to the intersection of 200 East road and 200 North Road, and I just made a motion to Brian, more like I didn't say "turn," I just made the motion for him to turn right on 200 East Road.

Q. And did you turn right?

A. Yes, we did.

Q. Okay. And where did Ryan go?

A. Ryan passed the intersection. When he realized that we had turned, he stopped and turned around.

Q. And how do you know he turned around?

A. Because the next time I looked in the windshield in the back of the car, he was – He had turned around so he was making actually a left off 200 North onto 200 East.

Q. Okay. And did you notice anything about his driving pattern at that point?

A. His – Well, he took that corner extremely sharp so I knew that he was going to obviously try to overtake us or whatever. I told Mr. Constable head for the sheriff's office. If nothing else, just head for the sheriff's office. . . .

Q. Okay. And after you saw him make that corner, what happened next?

A. We continued down that road. That road is – has – it's got – it's got several mesas. It's not a straight road. It's got hills and that. We were just coming down the first little mesa so we lost sight of his car. We topped out or bottomed out the next mesa and his car topped off the first one that we had just come through so it was obvious he was going to follow us, so I figured the safest and easiest way was for us to head for the sheriff's office.

Q. Okay. So after you saw him top that first mesa, what happened at that point?

A. We continued down a road – a road, at that point the intersection of 100 North Road and 200 East Road was coming up and there was a vehicle approaching the 200 East Road coming up to the stop sign.

I looked back again. Ryan was behind us still. I looked back again to make sure I just – make sure that car was going to stop. That car had actually stopped at the stop sign. The baby started crying. I looked back again. Ryan was still there.

(Tr., p.104, L.2 – p.107, L.4.) Brian also testified, consistent with Teresa, that Adams passed his car and continued on through an intersection, and when Brian turned at the intersection, Adams' car brake lights came on, an indication he was turning around to continue following them, so Brian began to head towards the Jerome police station because Shayna and Teresa were scared. (Tr., p.84, L.25 – p.87, L.12; p.120, Ls.5-20.) Shortly thereafter, Brian no longer saw Adams' car behind his, so he discontinued his route to the police station. (Tr., p. 90, Ls.16- 21.) A replay of the two state's exhibits in the jury room, to allow the jury to discern Adam's condition and demeanor when he made his initial statements about the accident, would not have had any effect on the testimony of Brian and Teresa about being chased by Adams.

Finally, Brian and Teresa's testimony that Adams was chasing them was buttressed by the testimony by Alex and Lauren Capps, who described a similar incident in which they were in a car while being chased and harassed by Adams the day before the fatal accident. Lauren Capps testified that while parked at a bank drive-through, Adams blocked their car with his car and started yelling at them about cutting him off. (Tr., p.264, L.19 – p.265, L.18.) Lauren further testified:

And then finally he, like, backed up or whatever, and we were going and he just kept following us and then he kept, like, pulling out in front of us and, like, stomping on his brakes, like, a whole bunch of different times.

And then, like, we were headed back to Jerome and we got on the bridge or whatever and he, like, swerved, like, towards the end swerved in front of us and, like, we had to stop really fast, and he, like, opened his door like he was going to come after us, and I'm like, "Go," so we went around him really fast. And I was calling the Jerome cops at the time, because I'm, like, hey, there's this crazy guy that's following us home and I'm scared. And he followed us all the way home and he, like, circled around the Horseshoe and everything so it was pretty scary.

(Tr., p.265, L.22 – p.266, L.13.) Even if the jury had been allowed to replay the two state's exhibits during its deliberations for the purpose of determining Adams' condition and demeanor, it would have had no relevance to the Capps' damaging testimony about how Adams was similarly driving aggressively the day before the accident.

Considering the evidence presented at trial, especially the scientifically un rebutted evidence that Adams' car was traveling at 108 miles per hour when his car flew 80 feet through the air, and Adam's many incriminating statements that were inconsistent with his trial testimony, this Court should find, beyond a reasonable doubt, that even if State's Exhibits 131 and 134 had been permitted to be replayed by the jury

during its deliberations, the verdict of guilty for vehicular manslaughter based on gross negligence would have been the same.

CONCLUSION

The state respectfully requests this Court affirm Adams' conviction and sentence.

DATED this 15th day of October, 2012.



JOHN C. McKINNEY
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 15th day of October, 2012, served a true and correct copy of the attached RESPONDENT'S BRIEF by causing a copy addressed to:

ERIK R. LEHTINEN
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in the State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.


John C. McKinney
Deputy Attorney General

JCM/pm